



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 13, 1996

Ms. Merri Schneider-Vogel
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR96-0698

Dear Ms. Schneider-Vogel:

On behalf of the San Jacinto College District (the "SJCD"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38333.

The SJCD received a request "to look at Marvin Wittrock's file" and "to obtain a copy of [Mr. Wittrock's] payroll records for the last two years." You assert that all of Mr. Wittrock's performance evaluations are made confidential by section 21.355 of the Education Code. When information is made confidential by statute a governmental body must withhold that information from required public disclosure under the Open Records Act. Gov't Code § 522.101.

Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." You assert that this provision is applicable to junior and community colleges by virtue of section 130.084 of the Education Code. Section 130.084 reads as follows:

The board of trustees of junior college districts shall be governed in the establishment, management and control of the junior college by the general law governing the establishment, management and control of independent school districts insofar as the general law is applicable.

By its terms, section 130.084 effects only the authority of junior college trustees to direct a junior college. *See San Antonio Union Junior College Dist. v. Daniel*, 206 S.W.2d 995 (Tex. 1947). Thus, this office has applied section 130.084 and its predecessor to confer various school district powers on junior college trustees. *See, e.g.*, Attorney General Opinions DM-178 (1992) (power to borrow money secured by delinquent maintenance

tax revenues under Educ. Code § 20.45), M-878 (1971) (power to issue time warrants to repair, renovate, and equip school buildings under Educ. Code § 20.43), M-700 (1970) (power to exercise right of eminent domain under Educ. Code § 23.31). We do not believe a statute that makes certain information confidential, such as section 21.355 of the Education Code, bears on the trustees' direction of a junior college or in any way confers power on those trustees. Thus, section 21.355 does not effect SJCD's authority to direct the junior college.


Furthermore, we do not believe section 21.355 is a general law that is "applicable" to junior colleges through section 130.084. Section 21.355 is part of subchapter H of the Education Code which sets forth the appraisal processes that relate to the accountability of public schools providing compulsory public education. We believe subchapter H is applicable only to public school districts and not to junior college districts.

Moreover, this office has limited the meaning of "teacher" and "administrator" for purposes of section 21.355. *See* Open Records Decision No. 643 (1996). The term "teacher" in section 21.355 means an individual who is required to hold and does hold a teaching certificate or school district teaching permit under subchapter B of chapter 21, and who is engaged in teaching at the time of the evaluation. *See id.* at 4. An "administrator" for purposes of section 21.355 is a person who is required to hold and does hold an administrator's certificate under subchapter B of chapter 21, and is currently performing the functions of an administrator. *See id.* We do not believe Mr. Wittrock is a "teacher" or an "administrator" as those terms are used in section 21.355.

Thus, we believe that section 21.355 is inapplicable to a junior college district through section 130.084 of the Education Code. Accordingly, SJCD may not withhold the requested evaluations from the public pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. As you raise no other exception to the release of the requested information, we conclude SJCD must release the requested evaluations.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Kay Guajardo".

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 38333

Enclosures: Submitted documents
Open Records Decision No. 643 (1996)

cc: Ms. Shirley Baker
3901 Ann Lane
Pearland, Texas 77584
(w/ Open Records Decision No. 643 (1996))